

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF INDIANA
3 INDIANAPOLIS DIVISION
4

5 RED BARN MOTORS, INC., CASE NO.
6 PLATINUM MOTORS, INC., 1:14-cv-1589-TWP-
7 MATTINGLY AUTO SALES, DKL
8 INC., AND YOUNG EXECUTIVE
9 MANAGEMENT & CONSULTING
10 SERVICES, INC.,
11 individually and on
12 behalf of other members
13 of the general public
14 similarly situated,
15

16 VERSUS

17 COX ENTERPRISES, INC.,
18 COX AUTOMOTIVE, INC.,
19 NEXTGEAR CAPITAL, INC.
20 F/K/A DEALER SERVICES
21 CORPORATION, successor by
22 merger with Manheim
23 Automotive Financial
24 Services, Inc., and JOHN
25 WICK

Corporate Deposition of RED BAN MOTORS,
INC., through its representative DEVON LONDON, 25852
Plantation Avenue, Denham Springs, Louisiana 70726,
taken in the offices of Lugenhuhl, Wheaton, Peck,
Rankin & Hubbard, 9311 Bluebonnet Boulevard, Suite
A, Baton Rouge, Louisiana on Tuesday, October 25,
2016, commencing at 9:07 a.m.



EXHIBIT E

800.211.DEPO (3376)
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DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016

17

1 Q. Okay. So since 2011, you've been general
2 sales manager?

3 A. Yes.

4 Q. Okay. Any other positions at Red Barn?

5 A. No. I mean, you can say general sales
6 manager, general manager. It's the same thing over
7 a small used car operation.

8 Q. Okay. Where is Red Barn?

9 A. At 26007 LA Highway 16, Denham Springs,
10 Louisiana 70726.

11 Q. And has that been true since you've been
12 there?

13 A. Yes.

14 Q. Okay. So as general sales manager,
15 general manager, how would you describe your -- your
16 responsibilities at Red Barn?

17 A. My responsibility was to oversee the
18 operations, oversee the employees, report back to
19 Mr. Richardson, the owner, you know, activities that
20 transpired and fulfill his desires to operate the
21 company.

22 Q. Okay. And so it's not just focused on
23 sales, you're basically running the business?

24 A. Pretty much.

25 Q. Okay. And tell me who Mr. Richardson is?

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016

18

1 A. He's my father-in-law.

2 Q. Okay. It's Don Richardson, Donald?

3 A. Don Richardson.

4 Q. Is it Donald or Don?

5 A. Donald --

6 Q. Okay.

7 A. -- Donald B.

8 Q. And he's an owner of Red Barn?

9 A. Yes.

10 Q. Is he the only owner?

11 A. I believe he is an owner with his wife.

12 I may be incorrect on that.

13 Q. And her name is?

14 A. Barbara Richardson.

15 Q. Are you still his son-in-law?

16 A. Yes.

17 Q. When did you marry into the family?

18 A. I married into the family in 2003.

19 Q. Okay. That's when you were still in Las
20 Vegas?

21 A. Yes.

22 Q. Okay. As general manager, do you report
23 to Mr. Richardson on a day-to-day basis or is he
24 more of an absentee owner?

25 A. No. I report to him, I wouldn't say

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016

19

1 every single day, but on a very regular basis.

2 Q. Okay.

3 MR. COMAN:

4 And let me lodge an objection to the
5 term "absentee owner."

6 Please, if you could give me a
7 chance to think. I'm not exactly the fastest
8 person in the world.

9 BY MR. McCARTER:

10 Q. And high level, what is the business of
11 Red Barn?

12 A. What was the question?

13 Q. What is the business of Red Barn, how
14 does it make money?

15 A. Basically, it purchases used cars and
16 resells those used cars for a profit.

17 Q. Does it sell any related products like --
18 like you did at Findlay, gap insurance, warranties,
19 does it do any financing?

20 A. We did for a short period of time, but
21 for the most part, no.

22 Q. What period of time did you sell those
23 other products?

24 A. That was probably sometime in the -- mid
25 2011.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
20

1 Q. Okay. At a high level, was -- was
2 Findlay Automotive in the same business of buying
3 and selling cars for profit?

4 A. Yes.

5 Q. Where did Findlay gets its cars generally
6 to resell?

7 A. At automobile auctions or dealer
8 trade-ins.

9 Q. Anywhere else you can think of, purchases
10 directly from other dealers, on-line sales, anything
11 like that?

12 A. There would be purchases from other
13 dealers, very infrequently. Also, very infrequently
14 -- very infrequently, a customer would come in and
15 want to just sell their car outright.

16 Q. Okay. And is that generally true of Red
17 Barn as well, where -- where does Red Barn get its
18 cars?

19 A. Red Barn basically gets its cars from the
20 auto auctions, trade-ins, and occasionally from a
21 customer that would come in and want to just sell
22 the car outright.

23 Q. What -- what auto auctions does Red Barn
24 buy and sell from now?

25 A. As of right now, Oak View Auto Auction.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
21

1 Q. Where is that?

2 A. That is on Flannery Road in Baton Rouge.

3 Q. Okay. Anywhere else?

4 A. Long Beach Auto Auction.

5 Q. Is that in Mississippi?

6 A. That's in Mississippi, Long Beach,
7 Mississippi.

8 Q. Any other auction?

9 A. And ABC Baton Rouge.

10 Q. Are you a buyer and seller at all of
11 those or just a buyer?

12 A. Buyer and seller.

13 Q. And I'm sorry to keep jumping back and
14 forth, but I keep thinking of new questions. With
15 Findlay, where did they -- what auctions did they
16 generally go to?

17 A. Findlay would go to -- I don't remember
18 the names of them. There was one large Manheim
19 auction and two smaller independent auctions.

20 Q. In Nevada?

21 A. In Nevada.

22 Q. All right. So back to Red Barn, auto
23 auctions, trade-ins, and sometimes customers would
24 sell a car outright to you?

25 A. Correct.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016

22

1 Q. Do you ever buy from other dealers
2 directly?

3 A. I don't believe we have, no.

4 Q. Okay. Do you ever buy from other on-line
5 sources like eBay Motors or Smart Auction or
6 anything like that?

7 A. We have bought several vehicles on eBay.

8 Q. Okay. Recently, in the last year or two?

9 A. No. That was -- that was earlier in the
10 business development.

11 Q. Just a rough time frame?

12 A. 2011.

13 Q. Okay. So is Red Barn a licensed used car
14 dealer?

15 A. Yes, with the Louisiana Used Motor
16 Vehicle Commission.

17 Q. Are you only licensed in used cars or can
18 you sell -- buy and sell new cars, too?

19 A. We are only licensed in used cars. The
20 license is all inclusive of like RVs and motorcycles
21 and things like that, trailers, but we don't really
22 get into that.

23 Q. Okay.

24 A. We stick with used cars and trucks.

25 Q. And you have the -- just the one lot in

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
23

1 Denham Springs?

2 A. Yes.

3 Q. How many cars do you have on your lot at
4 this time?

5 A. At this time, there are approximately 37
6 --

7 Q. Okay.

8 A. -- 37 to 40.

9 Q. Do you know when Red Barn first opened?

10 A. I don't know the exact date.

11 Q. Okay. I think I'll have some records in
12 a minute that show 2010 was the corporate
13 organization. Does that sound like the rough
14 starting time?

15 A. That sounds correct.

16 Q. In fact, let me just go ahead and show
17 you.

18 MR. McCARTER:

19 We'll call this Exhibit #2.

20 BY MR. McCARTER:

21 Q. And I'll represent to you this is just a
22 printout from the Louisiana Secretary of State
23 website related to Red Barn Motors, Inc. I know you
24 may not have seen this record before, but you can
25 see in the middle that it shows a filing date of

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
24

1 February 26, 2010. Do you see that?

2 A. Uh-huh.

3 Q. Do you have any reason to think that
4 wasn't roughly the date of organization for the
5 company?

6 A. That was probably the date of
7 organization.

8 Q. Okay. And it shows -- on the second page
9 of that exhibit, it shows Donald Richardson as
10 president and Barbara Richardson as
11 secretary-treasurer. Is there any reason to think
12 that's not accurate?

13 A. No.

14 Q. Okay. And is the company still in good
15 standing, to your knowledge?

16 MR. COMAN:

17 Objection as to vagueness. Good
18 standing as to the Secretary of State or good
19 standing as --

20 MR. McCARTER:

21 If you don't mind, let's just do
22 basic objections like the federal rules
23 instead of directing his answers.

24 MR. COMAN:

25 Sure.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
37

1 If Red Barn has acquired the vehicle with
2 credit of its own, does -- does the DMS software
3 track what interest and fees you pay on the vehicle?

4 A. If we purchased a vehicle, it would not
5 track the interest and fees.

6 Q. Okay. So it just -- it just shows the
7 purchase -- or you just track the purchase price in
8 there?

9 A. Correct.

10 Q. And not your incremental payments?

11 A. Correct.

12 Q. Okay. All right. And a moment ago, you
13 described sort of the general responsibilities of
14 office manager. Were those generally the same and
15 true when Ms. Roach was office manager?

16 A. Yes.

17 Q. Okay. And what time frame was Ms. Roach
18 the office manager?

19 A. From probably mid 2011 to when Jenny took
20 over.

21 Q. Which again was roughly?

22 A. 2013.

23 Q. Was Ms. Roach terminated or did she quit?

24 A. She quit.

25 Q. Besides your litigation counsel, do you

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
38

1 have regular day-to-day business counsel?

2 A. The only counsel that we have ever used,
3 and it was just, you know, asking questions would be
4 Cassie Felder.

5 Q. Okay. All right. So I -- I think we
6 discussed earlier that -- I want to walk through
7 some of the ways that Red Barn makes money and I
8 understand that one of those is to buy cars at a
9 lower price and try to sell them at a higher price?

10 MR. COMAN:

11 Objection to form.

12 BY MR. McCARTER:

13 Q. Is that right?

14 A. Repeat the question.

15 Q. Okay. So I -- I understand one of the
16 ways Red Barn makes money is to buy and sell cars;
17 is that true?

18 A. Correct.

19 Q. Okay. And you do that by buying at one
20 price and trying to sell them at a higher price?

21 A. At a higher price.

22 Q. Okay. Are -- are most of your sales
23 retail or wholesale or some other?

24 A. Most of our sales are retail.

25 Q. But you do occasionally sell at auction?

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
39

1 A. Yes.

2 Q. When would you sell at auction versus
3 retail?

4 A. If the vehicle has aged, if there's
5 something wrong with the vehicle and we don't want
6 to put that off onto a customer.

7 Q. You put it off on another dealer.

8 The auctions we talked about earlier, Oak
9 View, Long Beach, ABC Baton Rouge, are they all
10 wholesale auctions?

11 A. They are wholesale auctions.

12 Q. Do you ever go to retail public auctions?

13 A. No.

14 Q. Do you ever host a retail public auction
15 at your lot?

16 A. No.

17 Q. All right. So besides vehicle sales, I
18 understand that you do some financing -- in-house
19 financing?

20 A. Yes --

21 Q. Okay.

22 A. -- very limited.

23 Q. When would you typically do in-house
24 financing?

25 A. We would typically do in-house financing

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
40

1 if the buyer shows the ability to repay the loan and
2 we have been unable to get it approved through other
3 sources.

4 Q. And have you done some of that in-house
5 financing since Red Barn opened in 2010?

6 A. Yes.

7 Q. Do you have any estimate of how many
8 in-house installment deals you do now per year?

9 A. Per year, I would say a couple a month,
10 24, 25.

11 Q. And has that changed since 2010, that
12 number?

13 A. That number has changed. It's gone down
14 a little.

15 Q. How much?

16 A. I'm not positive. I really -- I -- I
17 don't know the answer to that question.

18 Q. Okay. And at a high level, what do these
19 in-house installment deals look like, is there --
20 there's an installment contract with the retail
21 customer?

22 A. Uh-huh.

23 Q. Okay. And do you -- do you agree on a
24 price for the vehicle up front?

25 A. Yes.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
41

1 Q. All right. And then they pay that price
2 over a certain number of months?

3 A. Correct.

4 Q. And how many months will your deals
5 typically run?

6 A. Generally, they run between 12 and 24
7 months.

8 Q. Do they ever go longer?

9 A. On a rare occasion.

10 Q. Okay. And they're making monthly
11 payments of the purchase amount?

12 A. They're making the monthly payments they
13 agreed to originally make when they purchased the
14 car, yes.

15 Q. Okay. And I assume that -- and tell me
16 if this is wrong. I'm just trying to summarize it,
17 so we can move faster. But I assume those monthly
18 payments have a principal and interest component?

19 A. Correct.

20 Q. Okay. And what's the typical interest
21 rate you would charge on an installment contract?

22 A. 30 percent.

23 Q. And so when you -- I'm sorry, strike
24 that.

25 If the consumer defaults on their

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
42

1 payments, what are -- what are -- what recourse do
2 you have?

3 A. The only recourse we have is to try to
4 get the vehicle back or to go through the legal
5 system and get the vehicle back.

6 Q. So you retain a security interest or some
7 interest in the vehicle until you're paid for it?

8 A. Correct.

9 Q. Does that mean you hang onto the title
10 and put your lien on the title?

11 A. Yes. We are lienholder on the title.

12 Q. But you do go ahead and put the title in
13 the retail customer's name, and then you just note a
14 lien on it?

15 A. Correct.

16 Q. Okay. When does the interest start
17 running on those deals?

18 A. The interest starts running when the
19 vehicle is purchased.

20 Q. Okay. And at that point, you're
21 releasing the vehicle to the consumer, and then
22 they're making monthly payments starting a month out
23 from there?

24 A. Correct, 30 to 45 days.

25 Q. Other than releasing the car to the

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
43

1 consumer and putting the title in their name, are
2 you giving them anything else at the outset of that
3 arrangement?

4 MR. COMAN:

5 Objection to form.

6 THE WITNESS:

7 Giving them anything else?

8 BY MR. McCARTER:

9 Q. Yes.

10 A. What would be anything else?

11 Q. Are you giving them anything else under
12 that contract other than the possession and use of
13 the vehicle?

14 MR. COMAN:

15 Let me just first lodge an
16 objection. And then ask you, Mr. McCarter,
17 which deposition topic is this question
18 addressing in your Exhibit A of your 30(b)(6)?
19 If you are trying to reserve your right to
20 depose Mr. London again, for the past 50
21 minutes or so, I do not believe you have
22 touched upon any of these deposition topics
23 attached to your 30(b)(6) notice. So if you
24 could tell me which topics that is, that would
25 be helpful for me. If you would like, I'm

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
44

1 ready for a break.

2 MR. McCARTER:

3 I'm going to answer your question.

4 MR. COMAN:

5 Okay. Sure.

6 MR. McCARTER:

7 All right. So among others, it
8 relates to Topic number 7, "Any financing
9 arrangements Red Barn has had with any
10 financing company, auction, or other third
11 party since December 3, 2007, including the
12 transaction history and current status of that
13 arrangement."

14 I also believe it relates to Topics
15 number 22 and number 23, the damages
16 originally suffered by Red Barn and it's
17 efforts to mitigate those damages.

18 To the extent these retail
19 installment contracts are part of the profit
20 of the business and the income of the business
21 and you've alleged a tortious interference
22 claim, we need to see how much that's changed
23 and what effect that may have had since 2011.

24 MR. COMAN:

25 For the record, I understand your

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
45

1 reference is to number 22 and number 23.
2 However, your question involves Red Barn's
3 practices with retail customers and his
4 finance practices as opposed to what damages
5 he may have suffered according to the
6 complaint.

7 MR. McCARTER:

8 Are you instructing him not to
9 answer?

10 MR. COMAN:

11 No.

12 MR. McCARTER:

13 Okay. All right. We can take a
14 break now if you want.

15 (Recess taken.)

16 MR. McCARTER:

17 We're back on the record.

18 BY MR. McCARTER:

19 Q. Mr. London, right before we took a break,
20 we were talking about your in-house
21 buy-here/pay-here paper? Do you remember that?

22 A. Yes.

23 Q. One more question on that.

24 Do you generally hold that paper in
25 house, or do you then try to sell it out to other

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
54

1 So since that question focused on
2 the consumer, number 7, obviously, does not.

3 MR. McCARTER:

4 Okay. Number 7 says, "Any financing
5 arrangements Red Barn has had with any
6 financing company, auction or third party" --
7 which a consumer would be -- "since
8 December 3, 2007, including the transaction
9 history and current status of that
10 arrangement."

11 And then 22 and 23 speak to Red
12 Barn's damages to the extent trade-ins are an
13 integral part of their sales and their
14 business, then how they handle and price
15 trade-ins will affect what their damages are
16 and what they've done to mitigate those
17 damages.

18 MR. COMAN:

19 I've lodged my objection.

20 You can answer, if you know.

21 THE WITNESS:

22 Okay. Can you repeat the question?

23 MR. McCARTER:

24 Sure.

25 BY MR. McCARTER:



DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
55

1 Q. At a high -- I just want to know, at a
2 high level, how do you handle trade-ins? How do you
3 price them, and how do you work them into your
4 retail deals?

5 A. At high level, there is a -- there is not
6 a high level of trade-ins.

7 Q. Okay.

8 A. There is a very low level of trade-ins.
9 I would say we may get one to two trade-ins a month.
10 We would value those vehicles based off of NADA,
11 Kelley Blue Book, MMR, and the condition of the
12 vehicle.

13 Q. And then do you take that off the net
14 price of the car you're selling? Do you buy them
15 outright, or do you handle it some other way?

16 A. We show it as a trade credit on the
17 purchase agreement. Which then, in turn, in the
18 state of Louisiana, they don't end up paying taxes
19 twice.

20 Q. And then, if they have a lien
21 outstanding, you have to pay off the lienholder to
22 get the title?

23 A. Correct.

24 Q. Do you commonly turn around and try to
25 retail those, or do you take them to auction, or

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
56

1 both?

2 A. Both.

3 Q. All right. Let's talk about auto
4 auctions.

5 You said your -- Red Barn is currently or
6 recently dealing at Oak View, ABC Baton Rouge and --
7 remind me of the third?

8 A. Long Beach.

9 Q. Long Beach. Have you dealt at any other
10 auctions, that you can recall, in the last five
11 years?

12 A. We have dealt with Manheim Lafayette and
13 Manheim New Orleans.

14 Q. At a high level, is the process of
15 bidding on and buying cars the same across all five
16 of those auctions?

17 A. Can you repeat the question?

18 Q. So I'm just -- I want to talk to you
19 about the auction purchase process.

20 A. Okay.

21 Q. So I'm saying, is there a major
22 difference in the way that works at those five
23 auctions?

24 A. No.

25 Q. Okay. And so please correct me if this

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
57

1 is wrong. I am just trying to summarize to move
2 this more quickly.

3 But you basically identify a car that you
4 are interested in. You bid on it along with other
5 dealers, if they are interested. And if you have
6 the high bid, you win the car?

7 MR. COMAN:

8 Objection as to form.

9 You can answer.

10 THE WITNESS:

11 Yes.

12 BY MR. McCARTER:

13 Q. Okay. And say you're the winning bidder
14 on a car at these auctions.

15 Then what happens next with that car?
16 How do you take the car back to your lot?

17 A. Basically, it depends on the auction. At
18 ABC Baton Rouge, they have just recently allowed us
19 to write checks for the vehicle.

20 Q. So by that you mean Red Barn's business
21 checks?

22 A. Correct.

23 Q. Okay. And when did that -- when did they
24 recently begin to allow that again?

25 A. Probably within the last six months.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
58

1 Q. Before that, what did they allow?

2 A. Before that, we were cash only.

3 Q. Cash?

4 A. Cash, cashier's check.

5 Q. Certified check, same thing?

6 A. Cashier's check.

7 Q. Okay.

8 A. I would have to go to the bank and get a
9 cashier's check.

10 Q. Okay. What about Oak View? How do you
11 acquire a car there?

12 A. Oak View, I have to pay cash or certified
13 funds.

14 Q. Still to this day?

15 A. Still to this day.

16 Q. Okay. And what about Long Beach?

17 A. Long Beach is cash or certified funds.
18 And they require us to put up a thousand-dollar
19 deposit.

20 Q. That -- is that a standing deposit that
21 you've paid, and it just sits there?

22 A. Yes.

23 Q. Okay.

24 A. You get it back at the end of auction if
25 there's no if bids. But to be able to participate

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
59

1 in the auction, we have to front the thousand
2 dollars.

3 Q. Does it get applied to your purchases, or
4 do you literally get a check back?

5 A. We take the money back. Because we get a
6 cashier's check for the amount of the vehicles we
7 purchased.

8 Q. Okay. And just -- so, typically, you go
9 in with a bunch of cashier checks in hand, or do you
10 go to a bank nearby and get what you need? Or how
11 does that work?

12 A. I go to a bank nearby and get what we
13 need.

14 Q. And has that changed over time? Were you
15 previously able to write business checks at those
16 auctions?

17 A. Yes.

18 Q. And when did that change?

19 A. That changed after we were listed in the
20 KO book.

21 Q. When was that?

22 A. Sometime around March to April of 2013.

23 Q. And what is your understanding of what
24 the KO book is?

25 A. My understanding is it is a list of

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
60

1 dealers that have had adverse relationships with
2 floorplan companies, auction houses, what have you,
3 that tracks those dealers and basically sets the
4 parameters as to how you can -- can or cannot buy
5 cars.

6 Q. Do you have a sense of who keeps that
7 list?

8 A. I do not know.

9 Q. And so you're -- but you're still able to
10 deal at Oak View, Long Beach and ABC.

11 So what is your sense of the change?

12 A. Well, number one, we can't use checks.

13 Q. Okay.

14 A. And, number two, we have to use -- you
15 know, we have to put up a deposit to be able to
16 purchase.

17 Q. Okay. All right. We'll come back to the
18 KO book.

19 And so when you were dealing at Manheim
20 Lafayette and Manheim New Orleans, how would you pay
21 for cars there?

22 A. We would, I believe, generally floorplan
23 them off.

24 Q. With DSC or others?

25 A. DSC or AFC.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
73

1 Q. Okay. And then, after that, how much
2 longer could you keep it? And you said 120 days,
3 but it was 60 days and then another 30 and then
4 another 30; is that right?

5 A. I believe so.

6 Q. Okay. And did you have an understanding
7 that you would have to pay -- if you put a car on a
8 DSC floorplan, then you would have to repay that
9 principal to DSC?

10 A. Absolutely.

11 Q. Okay. And did you have an understanding
12 that you would have to pay some interest and fees
13 beyond that principal?

14 A. If it was floored, yes.

15 Q. Okay. Did you have an understanding that
16 DSC had a security interest or some other rights in
17 the vehicle until they were paid?

18 MR. COMAN:

19 Objection to the extent -- let me
20 just object to form.

21 If you understand his question --

22 THE WITNESS:

23 I -- I don't.

24 MR. COMAN:

25 Okay.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
74

1 BY MR. McCARTER:

2 Q. Did you -- did -- when you floored a car
3 with DSC, did DSC have any rights to the car if they
4 didn't get paid?

5 A. Yes.

6 Q. Okay. And what's your understanding of
7 what that -- their rights were?

8 A. Their rights were to take the vehicle,
9 you know, and/or charge penalties and late fees.

10 Q. Okay. And do you have a sense of whether
11 their interest was limited to the particular
12 financed vehicle, or may -- or did it extend to
13 other property of Red Barn Motors?

14 MR. COMAN:

15 Objection to the form to the extent
16 it calls for a legal conclusion.

17 If you understand his question, you
18 can answer it.

19 THE WITNESS:

20 I believe that it extended to other
21 property of Red Barn.

22 BY MR. McCARTER:

23 Q. Like what? And I am asking about your
24 understanding. I am not asking you to quote the
25 legal documents.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
75

1 But what was your understanding of DSC's
2 right if there was a payment default?

3 A. My understanding was there was a personal
4 guaranty. So Don Richardson would be on the hook
5 for any payment default. And you would have rights
6 to the vehicles that you had floored.

7 Q. All right. And so when you put a vehicle
8 on the DSC floorplan, how did you know when payment
9 was due on that vehicle?

10 MR. COMAN:

11 I'm going -- let me just object to
12 the form on vagueness.

13 If you understand --

14 THE WITNESS:

15 Yes, again, can you rephrase it?

16 MR. McCARTER:

17 Sure.

18 BY MR. McCARTER:

19 Q. So we talked before that you would have
20 to pay a vehicle off within a certain amount of time
21 if you sold the vehicle, right?

22 A. Correct.

23 Q. Okay. But then, if you didn't, you had
24 60 days where you could roll it over further,
25 correct?

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
76

1 A. Correct.

2 Q. Okay. How did you keep track of when the
3 60 days ran?

4 A. We ran a report, daily, that gave us a
5 breakdown of all the -- my office manager ran a
6 report, but --

7 Q. And what did she run that report from?

8 MR. COMAN:

9 I'm sorry. Could you allow
10 Mr. London -- did you have anything further to
11 add?

12 THE WITNESS:

13 It would just tell when, in
14 chronological order or in date order, payments
15 were due, curtailments were due, principal
16 payments were due.

17 BY MR. McCARTER:

18 Q. Was that report specific to DSC, or was
19 it for any car you owned? Or something else?

20 A. No, that report was specific to DSC.

21 Q. Okay. And how did you create that
22 report?

23 A. That report was created on DSC's website.

24 Q. That's discoverdsc.com?

25 A. Yes.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016

77

1 Q. And you ran that daily?

2 A. Yes.

3 Q. And that -- besides telling you when
4 payment was due, it would also tell you how much was
5 due on each vehicle?

6 A. Yes.

7 Q. Were -- was Red Barn Motors ever involved
8 in collateral audits with DSC? Does that mean
9 anything to you, that term?

10 A. Collateral audits, they -- where somebody
11 would come out and inspect all of the vehicles and
12 make sure they're accounted for --

13 Q. Right.

14 A. -- is that a collateral audit?

15 Q. That's what I had in mind.

16 A. Yes.

17 Q. And you were involved in those?

18 A. I was involved. The used car managers
19 were involved.

20 Q. Let's step back a second.

21 Roughly what period of time were you
22 involved with DSC -- did you have a DSC floorplan?

23 A. From 2011 to 2013.

24 Q. Okay. And do you have any recollection
25 of how often the collateral audits would be during

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
78

1 that period?

2 A. Every 30 to 45 days.

3 Q. And is your recollection that AFC would
4 do the same thing?

5 A. Yes.

6 Q. Did you work with any other floorplaners
7 when you were at Findlay?

8 A. Not directly, no.

9 Q. Okay. All right. Were you involved in
10 applying for Red Barn's DSC line of credit?

11 A. Involved in applying -- Don Richardson
12 applied for the line of credit.

13 Q. Okay.

14 A. To the extent that I was involved, is I
15 told Don what Stuart had told me and what the
16 benefits of the line of credit would, you know, do
17 for the business. And then Don made his decision
18 based off of that.

19 Q. Okay. And did DSC request certain
20 information from the dealership, and did you help
21 provide any of that?

22 A. I know there was some information
23 requested, but I would have just turned that over to
24 the office manager and told the -- told them to
25 produce it.



DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
79

1 Q. And that was Sharon Roach, at the time?

2 A. I believe so.

3 Q. Let's step back to that.

4 You said, what Stuart had told you about
5 the benefits of the line.

6 Do you -- what do you recall about the
7 timing of that conversation or conversations? Like,
8 when did you talk to Stuart in terms of getting the
9 line set up?

10 A. It was in -- I think somewhere around May
11 to June of 2011.

12 Q. And what do you recall was said in those
13 conversations?

14 A. I recall he -- when soliciting us, he
15 told us -- he told me that the interest -- one thing
16 that sticks out in my mind was that the interest
17 rate was 4 percent, which it turned out not to be.
18 He told us -- told me the benefits of -- you know,
19 the advantages of having a floorplan and the amounts
20 that you could apply for and, you know, basically
21 asked if I was the one that had the ability to enter
22 into the agreement. And I told him no, and that's
23 when the appointment was set up with Don Richardson.

24 Q. Okay. What do you recall, if anything,
25 that he said about the benefits of having a

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
80

1 floorplan?

2 A. I don't.

3 Q. And you -- do you have any records at Red
4 Barn that would provide clarity on what he said?

5 A. No.

6 Q. Okay. And you said the interest rate
7 turned out not to be 4 percent.

8 What's your recollection of what it
9 turned out to be?

10 A. I could never figure that out.

11 Q. But somehow you know it wasn't 4 percent?

12 A. Correct.

13 Q. You couldn't figure out, so how do you
14 know it wasn't 4 percent?

15 A. Because in looking at the calculations
16 and the interest charged, it was much higher than a
17 4 percent figure.

18 Q. Okay. And did he say anything else about
19 interest? For example, how long -- when it would
20 start accruing or anything like that?

21 A. I don't recall.

22 Q. Do you have any records at Red Barn
23 Motors that would improve your recollection on that
24 point?

25 A. Just the contract.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016

81

1 Q. So your recollection is that, at some
2 point, the deal with DSC got reduced to contract,
3 right?

4 A. Yes.

5 Q. Were you involved in reviewing and
6 signing those?

7 A. I viewed it. I did not sign it.

8 Q. Did you review them before Mr. Richardson
9 signed and give him your input?

10 A. Yes.

11 Q. Okay. And what do you recall was said
12 during that discussion?

13 A. Just the benefit of having the
14 availability to have a credit line that would allow
15 us to, you know, increase sales volume. And that's
16 basically the gist of it. Just the benefits of
17 having the floorplan.

18 Q. Okay. So after reviewing the contracts,
19 you basically conveyed to Mr. Richardson that you
20 thought it made sense to move forward with DSC?

21 A. Yes.

22 Q. Do you recall whether Red Barn had those
23 contracts reviewed by counsel?

24 A. They did not.

25 Q. Other than yourself and Mr. Richardson,

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
82

1 do you know if anybody else reviewed the contracts
2 pre-signing?

3 A. No one.

4 Q. Do you recall any discussion with
5 Mr. LaBauve or anybody else at DSC about your right
6 to consult with counsel?

7 A. I do not recall.

8 Q. Okay.

9 A. I don't remember that at all.

10 Q. Okay. I am going to show you what we are
11 going to call Exhibit #4. All right.

12 MR. McCARTER:

13 And this document is NextGear004545
14 through 4549. Or, I am sorry, NG. Excuse me.
15 Let me restate the Bates numbers. It's
16 NG004545 through 4550.

17 BY MR. McCARTER:

18 Q. You can take as much time as you want
19 with it, but I'll call your attention to the
20 specific questions.

21 So, to be fair to you, this looks like a
22 NextGear internal -- or an DSC internal document
23 that you may never have seen before.

24 Have you seen this document before?

25 A. No.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
83

1 Q. Okay. It suggests --

2 MR. COMAN:

3 Let me just lodge an objection.
4 Hold on, please. Let me just lodge an
5 objection. As Mr. London has stated that he
6 has never seen this, and based on your
7 additional representation that this is an
8 internal DSC document, any questions,
9 therefore, following that, would lack any
10 foundation, and we would lodge an objection.

11 MR. McCARTER:

12 Okay. Fine. But I'm not asking him
13 to authenticate the document. I want to ask
14 him about specific information in the
15 document.

16 BY MR. McCARTER:

17 Q. So it suggests, on the first page, a DSC
18 start date of July 28, 2011.

19 And do you recall whether that was the
20 DSC start date for Red Barn, or not?

21 A. I don't know if that was the exact date.

22 Q. Okay. Does it seem roughly correct?

23 A. Roughly.

24 Q. Okay. At the bottom, do you see there is
25 an account executive recommendation? And

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
84

1 recognizing you didn't prepare this document, it
2 is -- it says, in that last sentence, "They do
3 prefer using DSC over AFC and would like to increase
4 their line with us for tax time coming up so they
5 can stock as much inventory as possible and continue
6 to grow and be profitable."

7 Do you see that language?

8 A. Yes.

9 Q. Do you recall having any discussions like
10 that or related to that point with Stuart or anybody
11 else at DSC?

12 A. I don't recall that.

13 Q. Okay. And this document is, at least
14 dated on its face, September 26, 2012.

15 Do you recall being involved in any kind
16 of a request for a line increase or discussions of a
17 line increase with DSC around that time?

18 A. What do you mean "a line increase"?

19 Q. Okay. So this is -- this looks like --
20 you know, it's roughly a year and a couple of months
21 after you started with DSC.

22 A. Okay.

23 Q. Do you remember asking for more credit or
24 a bigger line of credit with DSC around that time?

25 A. DSC would -- I don't know if it was DSC

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
179

1 waive the \$1,000 deposit that we were required to --
2 up front at each auction and he refused to do that.

3 Q. And so that was 2013?

4 A. That was 2000 -- that was -- that was
5 2015.

6 Q. Have you had any conversations with Long
7 Beach Auto Auction since that conversation in 2015
8 about writing business checks?

9 A. No.

10 Q. What exactly did Long Beach Auto Auction
11 say to you about the KO book?

12 A. Again, that we were in the KO book. I
13 mean --

14 Q. Anything more about the KO book or how it
15 works?

16 A. No.

17 Q. How about ABC Baton Rouge, have you had
18 any conversations with them about writing checks?

19 A. Yes.

20 Q. When was that?

21 A. I don't know the exact date.

22 Q. Was it closer to the bankruptcy in 2013
23 or more recent?

24 A. It was more recent than that. I don't
25 think they were established back then, but it was --

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
180

1 I don't want to guess.

2 Q. Do you think it was this year?

3 A. It wasn't this year. It would have -- it
4 would have been possibly 2015.

5 Q. Okay. And what exactly did ABC Baton
6 Rouge say about writing checks?

7 A. ABC Baton Rouge allowed us to write
8 checks up to a certain amount.

9 Q. Up to how much?

10 A. It's a \$12,000 figure.

11 Q. Is that per car or total for the day?

12 A. No, total for the day.

13 Q. Was there any discussion with ABC Baton
14 Rouge about the KO book, specifically?

15 A. No.

16 Q. I apologize if we covered this, but have
17 -- have you applied for any form of floorplan
18 financing since the bankruptcy?

19 A. No.

20 Q. All right. You -- you mentioned earlier
21 that you had a concern about DSC charging interest
22 on floorplanned vehicles before DSC received the
23 title; is that correct?

24 A. Before DSC paid for the vehicle.

25 Q. And I think you had some understanding



DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
181

1 that typically happens when the title comes in to
2 the auction?

3 A. Correct.

4 MR. McCARTER:

5 I'm going to show you what I'm going
6 to call Exhibit #23.

7 MR. COMAN:

8 Thank you.

9 BY MR. McCARTER:

10 Q. I'll represent to you that this is Red
11 Barn Motors' responses to NextGear Capital's first
12 set of interrogatories in this case. I believe we
13 just got a verification in yesterday; is that right?

14 MR. COMAN:

15 That's correct.

16 MR. McCARTER:

17 Okay. So that will shorten this.

18 BY MR. McCARTER:

19 Q. This suggests that you were involved in
20 responding to these interrogatories; is that
21 correct?

22 A. Yes.

23 Q. Okay. And in a couple of different
24 places, it says that you, Donald Richardson, and
25 Sharon Roach would be the Red Barn personnel that

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
182

1 would have interacted with DSC and have knowledge of
2 the DSC floorplan. Does that sound right?

3 A. It does.

4 Q. Okay. Is there anybody else you think of
5 at the dealership that has specific knowledge of the
6 DSC floorplan?

7 A. No.

8 Q. Can I turn your attention to
9 interrogatory response #6? In the middle of the
10 Page 6, so there's an objection, and then it says,
11 "Subject to the foregoing specific and general
12 objection, Red Barns responds that during its
13 communications with NextGear and DSC to include
14 account executive Stuart LaBauve, NextGear and DSC
15 concealed from Red Barn that interest or fees would
16 be charged before money was actually lent under the
17 Floorplan Agreement."

18 Do you see that?

19 A. Yes.

20 Q. Okay. So that's -- that's saying that it
21 was hidden, but was there any specific discussion of
22 that issue with Stuart at the time you first entered
23 into the agreement with DSC?

24 A. At the time that we first entered into
25 the agreement with DSC, that was not brought up. It

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
183

1 was assumed -- it was assumed that, you know, based
2 on the agreement and the term advance and, you know,
3 when payment is made, you know, that it would have
4 been when the money was actually lent.

5 Q. Okay. Going on down in that same answer,
6 Red Barn has said, "Eventually, Devon London
7 confronted Stuart LaBauve following Devon London's
8 suspicion that defendants were, in fact, charging
9 interest and fees on money not actually lent. In
10 turn, Stuart LaBauve admitted that the defendants
11 were charging interest and fees on money not
12 actually lent."

13 Do you see that?

14 A. Yes.

15 Q. When did that conversation occur?

16 A. That occurred on or about -- it was when
17 I found out that they were back dating the interest
18 charged to the date of the auction versus the date
19 that I actually floorplanned the vehicle, and I
20 confronted him and said, you know, why are we being
21 charged interest when I haven't even chosen the
22 floorplan. And he said, I'll have to get back with
23 you. And he got back with me and basically said,
24 that's the way that it is, you know. They -- they
25 charge interest from the date of the sale versus the

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
184

1 date of the actual loan.

2 Q. Okay. What time frame -- I mean, when
3 did that actually happen?

4 A. I believe that it was June -- June or
5 July of 2012 is when I figured that out, mid 2012.

6 Q. And that seems to be consistent with
7 paragraph 45 of your -- of your complaint where you
8 -- you said -- and I'll just read it to you. It
9 says, "First met in or about June of 2012. Devon
10 London, Red Barn's general manager, discovered
11 transactions in which Red Barn had not actually
12 chosen to use the Floorplan Agreement such as
13 NextGear. And DSC had never actually loaned money
14 to Red Barn for the purchase of vehicles. It goes
15 on, but that -- that seems to be the time frame,
16 June of 2012?

17 A. Yes.

18 Q. Okay. And we responded back to you along
19 the lines that --

20 A. That's the way that it is.

21 Q. Okay. And your line stayed opened, you
22 continued to borrow from DSC until March of 2013?

23 A. That is correct.

24 Q. And were -- were there any other
25 witnesses to that conversation with Mr. LaBauve?



DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
185

1 A. No.

2 Q. Okay. Have you ever been part of a
3 discussion between DSC and any other dealer besides
4 Red Barn about the timing of DSC's interest charges?

5 A. Have I ever been in --

6 Q. A discussion between DSC and any other
7 dealer besides Red Barn about how DSC calculates
8 interest or when it starts to accrue?

9 A. I have.

10 Q. Who was that?

11 A. Dewitt Hall.

12 Q. You told me earlier. Is it Hall or Hull?

13 A. Hall, H-A-L-L.

14 Q. Okay. And what's -- what's his
15 dealership's name?

16 A. I don't know.

17 Q. And who was the DSC representative or
18 representatives?

19 A. For him?

20 Q. Well, you -- you said you were -- you
21 witnessed a discussion between DSC and him about
22 interest?

23 A. Oh, no, no. I -- I said I had a
24 conversation with him.

25 Q. Okay.



DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
186

1 A. I didn't witness a conversation between
2 him and --

3 Q. Okay. So you talked -- I'm sorry. You
4 talked about it with Dewitt, but you haven't
5 actually witnessed a conversation --

6 A. No.

7 Q. -- between DSC and Dewitt about interest?

8 A. No.

9 Q. Have you witnessed any conversation or
10 e-mails or other communication between DSC and any
11 third-party dealership besides Red Barn about
12 interest charges and how they're calculated?

13 A. Rephrase the question.

14 Q. Okay. Have you witnessed personally,
15 either you were -- you were there or you heard it or
16 you saw it, communications between DSC and some
17 dealer other than Red Barn about how DSC charged and
18 calculated interest?

19 A. No.

20 Q. Okay. And these conversations between
21 you and -- or this conversation that's mentioned in
22 interrogatory #6, was any of that in writing?

23 A. No.

24 Q. Where did the conversation take place?

25 A. At Oak View Auto Auction.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
187

1 Q. And you said he -- he got back with you.
2 Did he get back with you the same day or same place?

3 A. No. He got back to me the following week
4 I questioned him about it, again.

5 Q. Did you escalate your concern to anybody
6 else at DSC?

7 A. No.

8 Q. You had conversations with Dewitt Hall
9 about this issue. What -- when did those take
10 place?

11 A. Those took place probably around 2014.

12 Q. Okay. And where did they take place?

13 A. At Red Barn Motors.

14 Q. All right. And who raised the subject,
15 you or him?

16 A. I believe -- I believe he did.

17 Q. Okay. And what was the substance of
18 those discussions?

19 MR. COMAN:

20 I'm going to object. Is there a
21 particular item number in this deposition
22 topic that addresses Dewitt Hall?

23 MR. McCARTER:

24 I'm sure there is one that addresses
25 Red Barn Motors' concern with DSC's interest

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
188

1 charges. So if they made statements to any
2 party about those, that's certainly well
3 within the scope.

4 MR. COMAN:

5 Just give me a number.

6 MR. McCARTER:

7 Go to #2 just to start there.

8 MR. COMAN:

9 That's fine.

10 BY MR. McCARTER:

11 Q. So back to the question, what was the
12 substance of your discussions with Mr. Hall about
13 DSC's interest charges?

14 A. Basically, just that they were charging
15 interest on money that was never lent. I mean,
16 that's the gist of it.

17 Q. Did you raise that to him or did he raise
18 it to you?

19 A. I think it was mutual. It was a mutual
20 discussion.

21 Q. Okay. And what did he say related to
22 that?

23 A. I don't remember.

24 Q. Okay. And do you recall whether he
25 mentioned ever raising it to DSC or addressing it

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
189

1 with DSC?

2 A. I don't.

3 Q. You don't know one way or the other?

4 A. I don't know one way or the other.

5 Q. Okay. Do you recall high level what Red
6 Barn Motors' net income was prior to the time of
7 bankruptcy in 2013?

8 A. I would not know that.

9 Q. Who would know that?

10 A. Don Richardson and the accountant.

11 Q. Do you know what Red Barn Motors' net
12 income is now as of 2016?

13 A. It is substantially lower. I, again,
14 don't have the exact figure.

15 Q. And you don't know what it was pre-2013,
16 but you know it's lower now?

17 A. I know it's lower now, yes.

18 Q. And you said substantially. How -- how
19 much lower?

20 A. I don't want to just guess. I just know
21 that we're selling less cars.

22 Q. Okay. Well, damages is certainly a topic
23 in -- in the notice. Are you -- are you prepared at
24 all to talk about what Red Barn's damages are in
25 this case?

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
190

1 A. I assume I should -- I would be.

2 Q. Okay. Do you have some understanding you
3 have a claim for the harm to your business allegedly
4 caused by DSC?

5 A. Yes.

6 Q. Okay. How -- how would you quantify that
7 harm?

8 A. How would I quantify that harm? I would
9 quantify that harm by the charging of interest over
10 a period of time and curtailment fees on money that
11 was never lent. There were many cases, in fact,
12 that not only was there money never lent, but we had
13 paid off the vehicle to DSC and had to wait for the
14 title to come in. So there was never a transaction
15 whatsoever for the money for -- for a floorplan
16 agreement and DSC was holding the money for the --
17 what they should have paid for the floorplan and the
18 amount that they collected from us including
19 interest and fees. We -- I mean, that happened many
20 occasions.

21 Q. Okay.

22 A. And --

23 Q. I'm sorry. Go ahead.

24 A. -- we were damaged, because it limited
25 our capital. As I said, we're a small mom-and-pop

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
191

1 used-car dealership and when you siphon money out of
2 a corporation over a period of years, that equates
3 to a substantial sum of money that would adversely
4 affect the business and would harm -- would harm the
5 business.

6 Q. Have you made any attempt to put a dollar
7 figure on the amount of interest that you believe
8 DSC overcharged you?

9 A. I have no attempt -- I have no way to do
10 that --

11 Q. Okay.

12 A. -- because DSC is the only one that knows
13 when the title was actually received.

14 Q. Is that something while you were with DSC
15 you ever asked DSC to let you know, the timing of
16 when it received the title and when it paid the
17 auction?

18 A. No. It -- it basically -- the whole
19 scheme basically evolved from Stuart and that first
20 conversation that we had. And then there was a car
21 that was a Ford 500 that we purchased in November of
22 2012 and it was a vehicle that we ended up returning
23 to the auction, because they could never get a
24 title. And DSC voluntarily reimbursed us for all of
25 the interest fees and curtailments and everything

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
192

1 else and there had never been any transaction
2 through the auction. So I started thinking back to
3 all the times that we had actually paid off
4 vehicles, because we had a separate bin on the wall
5 that was a wall pocket for DSC vehicles paid off
6 that were waiting on a title. And so I just started
7 putting together the scheme and that's how I figured
8 out that there was never -- there was never money
9 lent in the first place. If -- if I go to a bank
10 and I get a line of credit, which this was a line of
11 credit, and I go in and take a loan against that
12 line of credit, they're going to charge me interest
13 from the day that I take the loan. If I go into a
14 payday loan store and say, I'm going to need \$500
15 next week, the payday loan store, when I come back
16 next week to loan the money, isn't going to say, you
17 owe us for the last week, because we had a
18 commitment to pay you. The payday loan store is
19 going to charge me from the date that I actually
20 took out the loan.

21 Q. Okay. On the Ford 500, you said DSC
22 reimbursed everything you had paid on that?

23 A. Uh-huh.

24 Q. Okay. And that -- that vehicle was
25 actually unwound at the auction, the auction could

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
193

1 not provide title for that vehicle?

2 A. That is correct.

3 Q. Okay. On these other vehicles you're
4 talking about, there would be situations where the
5 auction is holding together the transaction and
6 eventually provides title, just sometime later,
7 correct?

8 A. Correct --

9 Q. And in the meantime --

10 A. -- after we paid off the vehicle.

11 Q. -- and in the meantime, you have the
12 vehicle and you're able to offer it for sale?

13 A. Correct. But in many cases, we were
14 unable to get funded. So our capital is tied up,
15 because we've paid DSC for the vehicle and we can't
16 get paid by the bank for the vehicle, because we
17 don't have a title to the vehicle. And in the
18 interim, we're paying interest and fees and charges
19 for -- mailing charges and everything else when
20 there was never a transaction in the first place.

21 Q. Okay. And I think you said earlier that
22 some vehicles are sold at auction with title present
23 and some are sold without title present?

24 A. That I -- I don't know. I would assume
25 that they have titles on some of them, I mean,



DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
194

1 especially the used car dealers that generally sell
2 vehicles, which we don't buy from, you know,
3 generally, because if a used car dealer is offering
4 a vehicle for sale, there's generally something
5 wrong with it, but new car dealers, I -- I don't
6 know whether they provide the titles or don't
7 provide the titles and when they do and when they
8 don't.

9 Q. Do you know whether that -- in your
10 experience at auto auctions, whether that's
11 typically announced, whether the car is announced or
12 there's a certain color light, for example, that
13 would show whether the title is present or not?

14 A. There was -- there was one auction I was
15 at that it was announced. I don't remember which
16 one it was, but it was announced on specific
17 vehicles and -- but it was not the majority of the
18 auctions.

19 Q. So you don't believe it is announced at
20 the majority of auctions, you believe it's not
21 announced at the majority of auctions?

22 A. Yes.

23 Q. Okay. And if the auctions and other
24 dealers say otherwise, you would disagree with that?

25 A. Yes.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
210

1 Q. Do you know what the nature of that claim
2 was?

3 A. Those were loans that -- basically, what
4 they did, and the claim was -- was much smaller than
5 that. That was an estimated amount based on what
6 the total claim could have been, but that was a
7 claim against defaults on loans, which Red Barn had
8 personally guaranteed.

9 Q. When you say "personally guaranteed," do
10 you mean they had recourse to Red Barn if they
11 didn't collect on their retail --

12 A. Correct.

13 Q. Okay. Do you know whether Mr.
14 Richardson, himself, personally guaranteed that
15 loan?

16 A. He -- Mr. Richardson personally gave
17 permission to personally guaranty them.

18 Q. So he gave permission for Red Barn to
19 guaranty them?

20 A. Yes.

21 Q. Okay. And just generally, on Schedule --
22 let's see, Schedule D -- this starts at Page 8.
23 Then, there's a Schedule E, and then there's a
24 Schedule F, and these -- those all show different
25 types of credit if you had claims against Red Barn

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
211

1 at the time of the bankruptcy.

2 Do you see that?

3 MR. COMAN:

4 It's multiple pages so I object to
5 form, but if can answer whatever question he's
6 got.

7 MR. McCARTER:

8 Well, we can go through them one by
9 one. I'm trying to knock it out.

10 BY MR. McCARTER:

11 Q. So between pages 8 and page 19 of Exhibit
12 #16, there's basically a list of a whole bunch of
13 creditors to Red Barn.

14 Do you see that?

15 A. Uh-huh.

16 Q. Okay. Do you know one way or the other
17 whether Red Barn was current with every one of those
18 creditors except DSC at the time this bankruptcy was
19 filed?

20 MR. COMAN:

21 I'll object to the form again.

22 THE WITNESS:

23 No, we are not current with all of
24 them.

25 BY MR. McCARTER:



DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
212

1 Q. You're weren't current with AFC either,
2 right, at the time the bankruptcy was filed?

3 A. No.

4 Q. Okay. Are there any other significant
5 creditors that you can recall that you weren't
6 current with at the time?

7 MR. COMAN:

8 Objection to form.

9 THE WITNESS:

10 I wouldn't know off the top of my
11 head.

12 BY MR. McCARTER:

13 Q. Okay. But there are several on these
14 pages that you were not current with?

15 A. Yes.

16 MR. McCARTER:

17 All right. Guys, I need five
18 minutes and I'll be able to rap it up.

19 MR. COMAN:

20 Sure.

21 MR. McCARTER:

22 Okay. Off the record.

23 (Recesses taken.)

24 MR. McCARTER:

25 All right. Ready?

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
213

1 MR. COMAN:

2 Yes, sir.

3 MR. McCARTER:

4 This won't take long. Back on the
5 record.

6 BY MR. McCARTER:

7 Q. Mr. London, we've talked before about
8 sort of the net income and business before
9 bankruptcy and after bankruptcy. Do you remember
10 that?

11 A. Uh-huh.

12 Q. So prior to bankruptcy, how did the
13 business compare from 2010 to 2011?

14 A. From 2010 to 2011, there was growth.

15 Q. Okay. And is that because you started up
16 in 2010 and you were just expanding operations?

17 A. Pretty much. I mean, in 2011 is when we
18 really started operating, you know, and running it
19 like a car dealership.

20 Q. Yes. And you got into credit
21 arrangements with both AFC and DSC in 2011?

22 A. Was it 2011?

23 Q. I think so.

24 A. Yes, okay.

25 Q. Okay. And did that credit allow you to

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
214

1 acquire more inventory and make more profit?

2 A. Yes. It allowed us to generate more
3 inventory.

4 Q. Okay. And then from 2011 to 2012, was
5 the business still growing, shrinking, do you
6 recall?

7 A. It was growing.

8 Q. Okay. And then 2012 to 2013, was it --
9 was it growing in 2013 before the NextGear default?

10 A. It was always on an upward swing.

11 Q. Okay. You testified earlier, though, and
12 it's in your answer as well, but in 2013 -- I'm
13 sorry, not your answer, in your complaint, that in
14 2013, Red Barn ran into financial difficulties --

15 A. Uh-huh.

16 Q. -- is that right?

17 A. Correct.

18 Q. And you described those as being mostly
19 caused by the issue of Southwest Finance, right?

20 A. Well, it was not largely caused by the
21 issue with Southwest Finance. That was an issue.
22 It was largely caused by this scheme that siphoned a
23 whole bunch of money off of the business.

24 Q. Okay. Prior to DSC, you know, claiming
25 default and picking up its cars in March of 2013,

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
215

1 were you having any other financial difficulties,
2 were there any other creditors you were having
3 trouble paying?

4 A. It all happened at once. It all happened
5 at once.

6 Q. Okay. But at some point prior to DSC
7 picking up cars, Southwest Finance informed you that
8 they weren't going to buy as much paper as you
9 thought they were going to buy?

10 A. That is correct.

11 Q. Okay. And were there any other creditors
12 that you can recall Red Barn defaulting to prior to
13 the middle of March 2013?

14 A. No. I believe we were current with
15 everybody.

16 Q. Okay.

17 MR. McCARTER:

18 Okay. No further questions, thank
19 you.

20 EXAMINATION

21 BY MR. COMAN:

22 Q. Mr. London, I just have a few. At the
23 beginning of your relationship with DSC -- and I say
24 your relationship, I should rephrase.

25 Red Barn -- Red Barn's relationship with

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
216

1 Dealer Services Corporation, did DSC, through
2 contracts or through representatives represent to
3 you that they would only charge you interest and
4 curtailment fees beginning from the date of advance?

5 MR. McCARTER:

6 Object to form.

7 BY MR. COMAN:

8 Q. You can answer.

9 MR. McCARTER:

10 Object. Asked and answered. Go
11 ahead.

12 THE WITNESS:

13 Yes.

14 BY MR. COMAN:

15 Q. Okay. Did DSC conceal that fact from Red
16 Barn?

17 A. Yes.

18 MR. McCARTER:

19 Object to form.

20 BY MR. COMAN:

21 Q. Let me rephrase it. I'm sorry.

22 Did Red Barn conceal the fact that it
23 was, in fact -- did DSC conceal from Red Barn that
24 it was, in fact -- DSC was hiding and actually
25 charging interest and curtailment fees to you

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
217

1 without your knowledge?

2 MR. McCARTER:

3 Object to form. These are all
4 leading and full of false assumptions.

5 BY MR. COMAN:

6 Q. You can answer.

7 A. Yes.

8 Q. Did that damage Red Barn or did Southwest
9 damage Red Barn?

10 MR. McCARTER:

11 Object to form.

12 THE WITNESS:

13 The damage to Red Barn was caused by
14 DSC.

15 BY MR. COMAN:

16 Q. Earlier, you testified under counsel's
17 questions regarding Stuart LaBauve and an
18 interaction you had with him, without the quote, you
19 were somewhere midstream, let's say, in the
20 relationship between Red Barn and DSC. Do you
21 recall that testimony?

22 A. Yes.

23 Q. Okay. And describe for us the
24 interaction that you had and the confrontation,
25 quote/unquote, that you had with Stuart LaBauve and

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
222

1 non-Manheim auctions, the deposits, whatever --
2 whatever relationship you have at this point with
3 non-Manheim auctions --

4 A. Uh-huh.

5 Q. -- in the business relationship, okay,
6 how is that -- is that restricting -- is that
7 adversely affecting you and your business at this
8 minute?

9 MR. McCARTER:

10 Objection to form.

11 THE WITNESS:

12 Yes, it does.

13 BY MR. COMAN:

14 Q. How?

15 A. It -- it limits our ability to procure
16 cars. It limits our ability to write checks on
17 vehicles. We have to pay for the vehicle at the
18 time that we purchase the vehicle, whether title is
19 present or not. The auctions -- the amount of
20 auctions that we can go to limits our ability to get
21 the same inventory that other dealers have access
22 to.

23 Q. Has that -- all those items, have those
24 adversely affected Red Barn's income?

25 A. Yes.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
223

1 Q. Has it adversely affected Red Barn's
2 business reputation?

3 MR. McCARTER:

4 Object to form. Lack of foundation.

5 THE WITNESS:

6 Yes.

7 BY MR. COMAN:

8 Q. Has that adversely affected your goodwill
9 within the industry?

10 MR. McCARTER:

11 Object to form.

12 THE WITNESS:

13 Absolutely.

14 BY MR. COMAN:

15 Q. Has it also affected the overall
16 valuation of Red Barn at this point?

17 MR. McCARTER:

18 Object to form.

19 BY MR. COMAN:

20 Q. You can answer.

21 A. Absolutely.

22 MR. COMAN:

23 Okay. One moment, please.

24 I don't think I have any further
25 questions at this time.

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
224

1 MR. McCARTER:

2 Okay. I've got to clear up a couple
3 things.

4 RE-EXAMINATION

5 BY MR. McCARTER:

6 Q. So we went in detail over your
7 conversations with Mr. LaBauve before and you said
8 in the initial conversations with him, you said that
9 he concealed the interest issue, but you didn't
10 recall any specifics representations about the
11 timing of interest. Do you remember that?

12 A. He said -- repeat.

13 Q. Okay. So both your complaint and your
14 testimony earlier was that Mr. LaBauve concealed the
15 timing of DSC's interest charging in initial sales
16 meeting that you had with him, but you testified he
17 didn't make any specific statements or
18 representations to you about the interest. Do you
19 recall that?

20 A. Yes.

21 Q. Okay. And so when your attorney just now
22 asked you about did he misrepresent to you in that
23 initial conversation, you're talking about the
24 concealment and not actual statements, correct?

25 A. I don't understand your question.



DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
225

1 Q. Okay. So he didn't make any actual
2 statements to you about the timing of interest and
3 when it would start on the DSC line in your initial
4 meeting with Mr. LaBauve?

5 A. No, but the contract stated it.

6 Q. Okay. So you're relying on what's in the
7 contract?

8 A. I'm relying on what's in the contract and
9 what was represented by Stuart LaBauve, which is not
10 the truth --

11 Q. Okay.

12 A. -- the -- the 4 percent, the -- there
13 were -- there were numerous things that weren't
14 true.

15 Q. Okay. We're specifically talking about
16 the timing of when interest began to accrue on the
17 advance. And you testified that Mr. LaBauve did not
18 make any statements to you on that issue in your
19 initial sales meeting with him. Do you recall that?

20 A. Yes.

21 Q. Okay. And there was some testimony just
22 now with your attorney where you were talking about
23 non-Manheim auctions. We -- we covered a handful.
24 Was it three or four non-Manheim auctions that
25 you've dealt at since 2013. Do you recall that?

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
226

1 Again, they were Oak View Auto Auction, Long Beach,
2 Mississippi, Baton Rouge ABC. Okay. Have you dealt
3 at any other Manheim auctions since 2013?

4 A. No.

5 Q. Okay. Have you tried to deal at any
6 other Manheim auction -- non-Manheim auction since
7 2013?

8 A. Yes.

9 Q. Which one?

10 A. I don't know the name of it.

11 Q. Do you know where it was?

12 A. It was, I believe, in Lafayette. We --
13 we signed up and we basically have not gone.

14 Q. So you -- you can go to this -- this
15 non-Manheim auction in Lafayette, you just chose not
16 to?

17 A. I don't -- I -- I don't remember if we
18 were approved or not approved.

19 Q. Okay. So as we sit here today, you don't
20 know whether you can do business at that auction?

21 A. Correct.

22 Q. Okay. Have you tried to go to any other
23 non-Manheim auctions since 2013?

24 A. No.

25 Q. Besides ABC Baton Rouge, have you tried

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
227

1 to go any other ABC auto auctions?

2 A. No.

3 Q. Okay. Have you tried to pass a check at
4 any other non-ABC auction -- I mean, any other ABC
5 auction?

6 A. Have I tried to pass a check?

7 Q. Have you paid with a check at any other
8 ABC auction?

9 MR. COMAN:

10 Objection to form.

11 THE WITNESS:

12 At any another ABC auction, because
13 AB -- you're saying just ABC auctions in
14 whole?

15 BY MR. McCARTER:

16 Q. Okay. You -- you understand that ABC
17 auction is an auction company with multiple
18 locations, right?

19 A. Yes.

20 Q. Okay. And we covered your permissions at
21 ABC Baton Rouge, right?

22 A. Correct.

23 Q. You said you haven't dealt at any other
24 ABC auctions since 2013?

25 A. Correct.



DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016
228

1 Q. So can I -- can I assume you haven't
2 tried to pay any other ABC auction a check since
3 2013?

4 A. Yes.

5 Q. Okay. Have you tried to pay any -- have
6 you tried to go to any Odessa auto auctions since
7 2013?

8 A. No.

9 Q. Have you tried to go any other
10 independent auctions besides the ones that we just
11 talked about specifically?

12 A. No. The reasoning is because our target
13 market, if you go outside of this market and have to
14 pay transportation fees and everything else to get
15 the vehicle here when you're dealing with a \$2,000
16 car is going to, you know, make you pay more for the
17 vehicle or end up being in the vehicle more
18 generally than if you stayed within the area.

19 Q. Okay. So it would be less profitable for
20 you to go outside of this area of Louisiana?

21 A. Generally, yes.

22 Q. Okay. And have you tried to buy on-line
23 at any wholesale vehicle source like Smart Auction,
24 Copart, anything like that?

25 A. No.